No. 80-1313

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

Julia McCain Lampkin-Asam, Ph.D.
Appellant

vs.

FTP-NEA (Florida Teaching Profession-
National Education Association)
Appellee

On Appeal from The Supreme Court
of Florida

REPLY BRIEF OF APPELLANT

Julia McCain Lampkin-Asam, Ph.D.
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STATEMENT OF THE CASE

The Appellant adheres to the Statement of the Case articulated in the Jurisdictional Statement Brief by the Appellant, dated February 2, 1981.

The Appellant adheres to the Appendix presented in the Jurisdictional Statement of the Appellant showing what happened in the courts below.

This Reply Brief by the Appellant is written as a rebuttal to the "Brief for Amicus Curiae The State of Florida" and as a motion to deny the conclusion by State of Florida to dismiss or affirm because substantial federal question exists.

The Appellant is appealing the final judgment of the Supreme Court of Florida refusing to accept jurisdiction of the state case which had not been tried by a jury and which had been decided erroneously by a judge for a fraudulent reason not in the record, and was per curiam affirmed erroneously by the District Court of Appeal, First District, State of Florida. The substantial federal question exists whether the new Florida Statute, Article V, section 3(b)3, Florida Constitution (quoted and discussed in the Jurisdictional Statement by Appellant) is repugnant to the U.S. Constitution (Amendments 5 and 14 "due process" and Amendment 14 "equal protection"? Since the merits of this case was not reviewed in any state court and the case was not tried by a jury the U.S. Constitutional rights of the Appellant to "due process" and "equal protection" of the law were violated.

The Supreme Court of Florida dismissed the Petition for Review filed in that Court (see Exhibit A in the Appendix of the Appellant Jurisdictional Statement Brief), citing the decision in Jenkins v. State, 385 So 2d 1356 (Fla. 1980), which construed Article V, Section 3(b)3 of the Florida Constitution, as amended, to prohibit jurisdiction by the Florida Supreme Court to review a District Court of Appeal decision, where the decision read in its entirity "per curiam affirmed".

The State of Florida through its amicus curiae brief on pp. 3 and 5 admits to not examining the record on appeal which was in the same city, Tallahassee, Florida, located across the street in the Supreme Court Building from the office of the Attorney General of the State of Florida. If the State of Florida was interested in justice, the record would be examined before writing an amicus curiae brief when the record below clearly shows that the Appellant's rights to "due process" in any state court based on the merits of the case has been denied.

In the Circuit Court the judge erroneously decided summary judgment based on a false statement by the judge who stated (see a5 in the appendix of the Jurisdictional Statement by the Appellant)

> "The file reflects that the Plaintiff received the legal representation to which she was entitled through her contract of membership with the Defendant."

In reality the record does not reflect that the FTP-NEA gave any legal representation to Dr. Julia Asam in the school year 1977-78. See quote from letter in record (p. 62) and Exhibit G of the Amended Complaint. This letter from FTP-NEA dated July 18, 1979 states,

> "FTP-NEA did not provide that legal assistance last year when originally requested and will not do so now."

The District Court of Appeal, First District, just "per curiam affirmed" a fraudulent reason by the Circuit Judge since his decision of Summary Judgment was based on the above false statement.

Therefore, the conclusion in the Brief Amicus Curiae State of Florida to dismiss the case should be denied because a substantial federal question exists whereby a

Florida Statute, Article V, Section 3(b)3, Florida Constitution is repugnant to the U.S. Constitution Amendment 14 ("due process" and "equal protection" and Amendment 5, "due process".) This state statute has caused the U.S. Constitutional rights of "due process" and "equal protection" of the Appellant to be violated because the Supreme Court of Florida dismissed this case because the District Court of Appeal, First District, "per curiam affirmed" the decision of the circuit court. Therefore, the case was not decided according to its merits in any state court thus violating the "due process" rights of the Appellant.

SUMMARY OF ARGUMENT

The Appellant in this Appellant Reply Brief adheres to the Jurisdictional Statement Brief by Appellant concerning the "Questions Presented", "Constitutional Provisions and Statutes Involved" "Substantiality of the Questions Presented", and "Conclusion".

The Appellant Reply Brief will discuss in the Argument that the appeal should be considered because a substantial federal question exists. Therefore, the Brief Amicus Curiae State of Florida conclusion that the case be dismissed or the Supreme Court of Florida decision be affirmed should be denied because a substantial federal question exists. The federal question is whether a state statute is repugnant to the U.S. Constitutional rights of an individual? This federal question is discussed below in the Argument and the Supreme Court of the United States can take jurisdiction under 28 USC section 1257(2). The federal question is, can the new Florida Statute, Article V, section 3(b)3, Florida Constitution, infringe upon the U.S. Constitutional rights of an individual to "due process" and "equal protection" under the 14th amendment and "due process" in the 5th amendment?

The Supreme Court of the United States can take original jursidction of the state case according to 28 USC section 2106 which states,

> "The Supreme Court of any other court of appellate jurisdiction may affirm, modify, vacate, set aside, or reverse any judgment... and may remand the cause and direct the entry of such appropriate judgment... or require such further proceedings to be had as may be just under the circumstances."

United States Supreme Court may review directly the decision of the highest state courts on the constitutionality, under the Federal Constitution, of state statutes. Horwitt v. Horwitt, D.C. Conn. 1950, 90 F Supp. 528.

Also see In re Elmore, 1967, 382 F 2d 125, 127, U.S. App. D.C. 176; Greenbelt Co. op. Pub. Ass'n v. Bresler, Md. 1970, 90 S Ct 1537, 398 U.S. 6, 26 L Ed 2d 6; Bantam Books, Inc. v. Sullivan, R.I. 1963, 83 S Ct 631, 372 U.S. 58, 9 L Ed 2d 584.

While the Supreme Court follows the decision of the highest state court as to the meaning of a state statute which is asserted to violate the Federal Constitution, the name given to the statute is not conclusive, and if that is to violate the Constitution of the United States, that law must be declared void. (Emphasis added.) Standard Oil Co. v. Graves, Wash. 1919, 39 S Ct 320, 249 U.S. 389, 63 L Ed. 662.

ARGUMENT

The appeal presents substantial federal question.

The Supreme Court of the United States can take jurisdiction under 28 USC section 1257(2)

which states,

> "By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

In the instant case, a new Florida Statute, Article V, section 3(b)(3) of the Florida Constitution has prevented the Appellant access to the highest court of the State, The Supreme Court of Florida. Thus, the Appellant's constitutional rights of "due process" in a court (5th and 14th amendments to the U.S. Constitution) and equal protection of the law (14 amendment to the U.S. Constitution) have been infringed by this new Florida Statute (Article V, section 3(b)3, Florida Constitution) because the Appellant's right to a trial by a jury was blocked by the erroneous and fraudulent decision of summary judgment by a circuit court judge.

The Appellant's constitutional rights of "due process" (5th and 14th amendments to the U.S. Constitution) are violated by the circuit judge making a judicial error not based on the record and by the circuit judge granting a summary judgment in a negligent case of a teacher's union (FTP-NEA) not representing the teacher. The Appellant's constitutional rights were further violated when the District Court of Appeal, First District, of the State of Florida, affirmed "Per curiam affirmed" the circuit court decision of summary judgment with the justices writing no opinion leading to the Florida Statute, Article 5, section 3(b)(3) of the Florida Constitution preventing the Appellant access to the highest court of the state, The Supreme Court of Florida.

Therefore, the new Florida Statute, Article V, section 3(b)3, Florida Constitution, was repugnant to the U.S. Constitution (amendment 14 "due process"and "equal protection" and amendment 5 "due process") because these U.S. Constitutional rights ("due process" and equal protection) were violated by the Florida Statute, Article V, section 3(b)3 due to the fact the Appellant did not have access to the highest state court, The Supreme Court of Florida. Further, the Appellant did not have the case reviewed on the merits in any state court. See Standard Oil Co. v. Graves (supra).

CONCLUSION

1. The Supreme Court of the United States should take jurisdiction of the instant case under 28 USC 1257(2) and allow the Appellant to write an Appellant's Merit Brief.

2. The new Florida Statute, Article V, section 3(b)3 of the Florida Constitution did infringe upon the Appellant's constitutional rights of "due process" (5th and 14th Amendments to the U.S. Constitution) and equal protection of the law (14th Amendment to the U.S. Constitution) because the Appellant was not allowed access to the highest court of the state, (The Supreme Court of Florida) due to the new Florida Statute.

3. The"Brief Amicus Curiae The State of Florida"should not be considered by the Supreme Court of the United States since the State of Florida failed to review the record and see that the Appellant's rights of "due process" were violated in the state courts.

4. The Conclusion in the Brief Amicus Curiae The State of Florida that the case should be dismissed or affirmed should be denied, based on the fact that a substantial federal question exists.

5. As an alternative, the decision by the Supreme Court of Florida not to review the case should be reversed since a Florida Statute is repugnant to the U.S. Constitution and the Supreme Court of the United States can order the Supreme Court of Florida to review the merits of the state case.

6. The Supreme Court of the United States does have jurisdiction in a case when a state statute infringes on the federal constitution. The Supreme Court of the United States can take original jurisdiction to see that justice is done or The Supreme Court of the United States can remand to a lower appellate court with instructions since the Appellant's "due process" rights were violated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th of March 1981 a copy of the above Reply Brief of the Appellant was mailed to the State of Florida, Hon. Gov. Daniel Robert Graham and the Attorney General, Jim Smith, The Capitol, Tallahassee, Florida; The Supreme Court of Florida and the District Court of Appeal, First District, The Supreme Court Building, Tallahassee, Florida; Circuit Court of the Second Judicial Circuit in and for Leon County, Leon County Courthouse, Tallahassee, Florida and FTP-NEA, (Florida Teaching Profession-National Education Association) Mr. John Myrick, President, and Mr. Ronald Meyer, Attorney, 213 S. Adams St., Tallahassee, Florida.

By: Julia McCain Lampkin-Asam
Julia McCain Lampkin-Asam, Ph.D.